

**United States Department of Labor
Employees' Compensation Appeals Board**

S.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Discovery Bay, CA, Employer**

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**Docket No. 16-1750
Issued: September 15, 2017**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 30, 2016 appellant filed a timely appeal from an August 5, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² In a June 8, 2016 decision, OWCP terminated appellant's wage-loss and schedule award compensation effective June 6, 2016 for refusal of suitable work, in accordance with 5 U.S.C. § 8106(c)(2). Appellant has not appealed this decision to the Board and this termination determination is not the subject of the present appeal. After the present appeal was filed on August 30, 2016, OWCP issued an October 14, 2016 decision finding that appellant received an \$838.64 overpayment of compensation and that she was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment. Appellant filed an appeal of the October 14, 2016 decision with the Board on November 23, 2016, which will be considered under Docket No. 17-0309.

ISSUES

The issues are: (1) whether appellant received an \$871.30 overpayment of compensation for the period July 26, 2014 to February 7, 2015; and (2) whether OWCP abused its discretion by refusing to waive recovery of the overpayment.

FACTUAL HISTORY

On September 13, 2011 appellant, then a 43-year-old rural letter carrier, filed an occupational disease claim (Form CA-2) alleging chronic neck pain and cervical spine arthritis due to repetitively moving her neck while performing her work duties over time. She indicated that she first became aware of her claimed condition on August 13, 2011 and realized its relation to her federal employment.

OWCP accepted that appellant sustained a left neck sprain, left brachial neuritis or radiculitis (not otherwise specified), aggravation of cervical degenerative disc disease, and left shoulder sprain. Appellant received disability compensation on the daily roll beginning October 24, 2011 and on the periodic roll beginning October 20, 2013.³ She underwent discectomy/fusion surgery at the C5-6 and C6-7 cervical disc levels on February 23, 2012 and left shoulder debridement/compression surgery on April 16, 2014. These procedures were authorized by OWCP. Appellant last worked on July 23, 2013 and retired in July 2014. She became eligible for retirement, effective July 26, 2014, but she elected to receive FECA benefits.

In a January 20, 2015 letter to OWCP, an Office of Personnel Management (OPM) customer service specialist advised that, as a compensation, appellant was eligible to continue Federal Employees' Group Life Insurance (FEGLI) coverage in the form of basic and optional life insurance. The specialist noted, "The final base salary on which FEGLI is based is \$64,727.00. Please deduct for Code CO Basic. Post Retirement election is No Reduction. Commencing date for the Post Retirement deductions is [July 26, 2014]. Basic and optional coverage premiums begin on the OWCP commencing date."

Upon review of the fiscal record, OWCP determined that appellant was covered by life insurance coverage, but that it had failed to deduct the appropriate premiums for post-retirement life insurance. On March 16, 2016 it notified appellant of its preliminary determination of an overpayment in the amount of \$871.30 overpayment of compensation because OWCP had failed to make proper deductions for life insurance. OWCP noted that, as appellant had elected the optional postretirement basic life insurance coverage at the no reduction level, it had

³ Appellant elected to receive retirement benefits effective June 6, 2016.

underdeducted premiums from July 26, 2014 to February 7, 2015.⁴ OWCP also made a preliminary determination that she was not at fault in the creation of the overpayment. It advised appellant that she could submit evidence challenging the fact, amount, or finding of fault, and request waiver of the overpayment. OWCP informed appellant that she could submit additional evidence in writing or at a prerecoupment hearing, but that a prerecoupment hearing must be requested within 30 days of the date of the written notice of overpayment. It also requested that appellant complete the enclosed overpayment recovery questionnaire (Form OWCP-20) within 30 days.

On March 22, 2016 appellant contacted OWCP *via* telephone and advised an OWCP claims examiner that she did not believe she had to repay the \$871.30 overpayment. The claims examiner requested that appellant submit her argument in writing, but she did not submit any argument or other evidence, such as a completed Form OWCP-20, within 30 days of OWCP's March 16, 2016 preliminary determination.

In an August 5, 2016 decision, OWCP finalized the overpayment of compensation in the amount of \$871.30 for the period July 26, 2014 to February 7, 2015 due to underdeduction of life insurance premiums. It found that appellant was not at fault in the creation of the overpayment, but determined that the overpayment was not subject to waiver of recovery because appellant had failed to submit the requested financial information, including a completed Form OWCP-20, within the allotted period.⁵

LEGAL PRECEDENT

Under the Federal Employees' Group Life Insurance (FEGLI) Program, most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the options.⁶ The coverage for basic life insurance is effective unless waived,⁷ and premiums for basic and optional life coverage are withheld from the employee's pay.⁸ Upon

⁴ OWCP noted that appellant received an \$864.97 overpayment of compensation because optional postretirement basic life insurance premiums were not deducted from her compensation for the period July 26, 2014 to February 7, 2015. It also indicated that the total overpayment of \$871.30 included a \$6.33 overpayment which was created because an improper amount of basic life insurance premiums had been deducted for the period July 26, 2014 to February 7, 2015. OWCP noted that such deductions were made in the amount of \$135.09 based on a coverage amount of \$61,756.00, but that the correct premium deduction amount was \$141.42 based on the correct coverage amount of \$64,727.00. The fiscal documents of record revealed that for the period July 26, 2014 to February 7, 2015 OWCP made monthly deductions of \$19.20 for basic life insurance premiums, but did not make any deductions for additional premiums related to optional postretirement basic life insurance. It also made deductions for health benefit premiums during the period.

⁵ OWCP requested that appellant submit the full amount of the \$871.30 overpayment. With respect to the recovery of an overpayment, the Board's jurisdiction is limited to those cases where OWCP seeks recovery from continuing compensation benefits. *D.R.*, 59 ECAB 148 (2007); *Miguel A. Muniz*, 54 ECAB 217 (2002). As appellant was not in receipt of continuing compensation at the time of OWCP's overpayment determination, the Board does not have jurisdiction over the method of recovery of the overpayment in this case. *See Lorenzo Rodriguez*, 51 ECAB 295 (2000); 20 C.F.R. § 10.441.

⁶ 5 U.S.C. § 8702(a).

⁷ *Id.* at § 8702(b).

⁸ *Id.* at § 8707.

retirement or upon separation from the employing establishment or being placed on the periodic FECA compensation rolls, an employee may choose to continue basic and optional life insurance coverage in which case the schedule of deductions made will be used to withhold premiums from his or her annuity or compensation payments.⁹ Basic insurance coverage shall be continued without cost to an employee who retired or began receiving compensation on or before December 31, 1989;¹⁰ however, the employee is responsible for payment of premiums for optional life insurance coverage which is accomplished by authorizing withholdings from his or her compensation.¹¹

A 1980 amendment of 5 U.S.C. § 8706(b)(2) provided that an employee receiving compensation under FECA could elect continuous withholdings from his or her compensation, so that his life insurance coverage could be continued without reduction. 5 C.F.R. § 870.701 (December 5, 1980) provided that an eligible employee had the option of choosing no life insurance; Option A -- basic coverage (at no additional cost) subject to continuous withholdings from compensation payments that would be reduced by two percent a month after age 65 with a maximum reduction of 75 percent; Option B -- basic coverage (at an additional premium) subject to continuous withholdings from compensation payments that would be reduced by one percent a month after age 65 with a maximum reduction of 50 percent; or Option C -- basic coverage subject to continuous withholdings from compensation payments with no reductions after age 65 (at a greater premium).¹²

Each employee must elect or waive Option A, Option B, and Option C coverage, in a manner designated by OPM, within 60 days after becoming eligible unless, during earlier employment, he or she filed an election or waiver that remains in effect.¹³ Any employee who does not file a Life Insurance Election with his or her employing office, in a manner designated by OPM, specifically electing any type of optional insurance, is considered to have waived it and does not have that type of optional insurance.¹⁴ When an underwithholding of life insurance premiums occurs, the entire amount is deemed an overpayment of compensation because OWCP must pay the full premium to the OPM upon discovery of the error.¹⁵

FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.¹⁶

⁹ *Id.* at § 8706.

¹⁰ *Id.* at § 8707(b)(2).

¹¹ *Id.* at § 8706(b)(3)(B). *See Edward J. Shea*, 43 ECAB 1022 (1992) (the Board found that claimant received an overpayment of compensation where he elected postretirement basic life insurance with no reduction and no premiums had been deducted from his compensation from January 3, 1988 to May 6, 1989). *See also Glen B. Cox*, 42 ECAB 703 (1991) (the Board found that an overpayment was created due to no deduction of premiums for optional life insurance for periods from July 1983 through November 1989).

¹² *See James J. Conway*, Docket No. 04-2047 (issued May 20, 2005).

¹³ 5 C.F.R. § 870.504(a)(1).

¹⁴ *Id.* at 504(b).

¹⁵ 5 U.S.C. § 8707(d); *see also Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

¹⁶ *Id.* at § 8102(a).

When an overpayment has been made to an individual because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.¹⁷

ANALYSIS

The Board finds that the case is not in posture for decision regarding whether appellant received an overpayment of compensation in the amount of \$871.30 for the period July 26, 2014 to February 7, 2015.

Appellant elected to receive compensation benefits from OWCP instead of retirement benefits from OPM effective July 26, 2014. While in compensation status, appellant remained responsible for all insurance benefits, including the premiums for postretirement basic life insurance at whatever option appellant had selected.¹⁸ However, the record does not contain any documentation reflecting appellant's election of the optional postretirement basic life insurance at no reduction after she retired. While OPM notified OWCP by letter dated January 20, 2015 that appellant had elected that option, it did not provide documentation of that election. OWCP procedures state that the preliminary notice of overpayment must clearly set forth the reason for the overpayment and contain a clearly written explanation as to how the overpayment was calculated.¹⁹ In this case, the hearing representative simply relied on a statement from OPM and placed the burden on appellant to disprove the fact of the overpayment. A claimant is entitled to an adequate statement of reasons with respect to any final decision by OWCP.²⁰

In *J.L.*,²¹ the Board remanded the case to OWCP for further development because the evidence was unclear as to why postretirement optional life insurance premiums had been deducted as of a certain date. Similarly, in this case, the evidence fails to establish the basis for the optional postretirement life insurance premiums for the no reduction option as the signed form is not in the record.

Appellant would be responsible for the additional cost associated with her election of the optional postretirement basic life insurance; however, as OWCP has not factually established that appellant elected the optional coverage, there can be no finding of overpayment. The case will be remanded to OWCP.²² On remand OWCP should obtain from OPM the executed

¹⁷ *Id.* at § 8129(a).

¹⁸ *See supra* note 15.

¹⁹ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.4a (June 2009).

²⁰ *See L.D.*, Docket No. 12-1408 (issued April 26, 2013) (finding that OWCP did not provide adequate reasons for calculating an overpayment when the record contained no worksheets or other specific documentation confirming the amount of compensation received).

²¹ Docket No. 14-1094 (issued June 25, 2015).

²² *See generally id.* (finding that the information from OPM did not sufficiently establish the date that a claimant's deductions for postretirement basic life began); *D.R.*, Docket No. 13-1531 (issued October 21, 2013) (finding that OWCP improperly found that a claimant received dual benefits from OPM and OWCP when the record did not contain clear documentation establishing that he received benefits from OPM during the period in question).

election form completed by appellant prior to determining whether appellant received an overpayment of compensation.²³ After such further development as OWCP deems necessary, it shall issue a *de novo* decision.²⁴

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the August 5, 2016 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded to OWCP for further proceedings consistent with this decision.

Issued: September 15, 2017
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

²³ In addition to noting that appellant received an \$864.97 overpayment because optional postretirement basic life insurance premiums were not deducted from her compensation for the period July 26, 2014 to February 7, 2015, OWCP also indicated that she received a \$6.33 overpayment related to basic life insurance deductions in incorrect amounts for the period July 26, 2014 to February 7, 2015. With respect to this \$6.33 figure, OWCP noted that basic life insurance premiums had already been deducted for the period July 26, 2014 to February 7, 2015 in the amount \$135.09 based on a coverage amount of \$61,756.00, but that the correct premium deduction amount was \$141.42 based on the correct coverage amount of \$64,727.00. On remand it should provide further explanation of and justification for this aspect of the claimed overpayment.

²⁴ In view of the Board's finding that appellant's case is not in posture for decision regarding whether she received an overpayment of compensation, the second issue of the case regarding waiver of recovery of the overpayment is moot.